

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

**CRIMINAL ACTION NO. 3:06MJ-230
UNITED STATES OF AMERICA,**

PLAINTIFF,

vs.

STEVEN D. GREEN,

DEFENDANT.

**MOTION TO RESTRAIN PARTIES AND OTHER TRIAL
PARTICIPANTS FROM MAKING EXTRAJUDICIAL
STATEMENTS OF INFLAMMATORY OR PREJUDICIAL NATURE**

Comes the defendant, Steven D. Green, by counsel, and moves the Court to prohibit inflammatory or otherwise prejudicial extrajudicial statements to news media or the public by trial participants, attorneys, parties, civilian or military law enforcement officers or investigators, witnesses or prospective witnesses, jurors, or court officials in the above-styled action. This request includes, but is not limited to, the President, Attorney General, and Secretary of Defense of the United States, their respective agents, representatives, subordinates, employees, and any persons acting in concert with or on behalf of such officials, and is intended to restrain extrajudicial statements regarding the guilt or innocence of the defendant, the appropriate sentence should he be convicted, any statements made by defendant to officials, the invocation of any rights by defendant, the identity of prospective witnesses or their probable testimony, the results of any mental or physical examinations, the

results of scientific or medical tests or experiments (including autopsies of any persons), statements concerning the merits of the case, or any other prejudicial or inflammatory fact or matter not of public record.

The constitutional guarantee of a fair trial by an impartial jury is the “most fundamental of all freedoms.” Estes v. Texas, 381 U.S. 532, 540 (1965). The divulging of the matter sought to be restrained by this motion would constitute a clear and imminent danger to the fair administration of justice herein. Accordingly, the Court is permitted to mitigate the effects of the likely dissemination of such unrestrained comment by the trial participants through the issuance of an order restricting the above-identified individuals from making extrajudicial statements of prejudicial or inflammatory information or opinion. CBS, Inc. v. Young, 522 F.2d 234, 240 (6th Cir. 1975).

It is true that the right to a fair trial, both in civil and criminal cases, is one of our most cherished values, and that a trial judge should have the authority to adopt reasonable measures to avoid injury to the parties by reason of prejudicial or inflammatory publicity.

Id. at 241. In Sheppard v. Maxwell, 384 U.S. 333 (1966), the Supreme Court held that a trial court erred in holding that it lacked authority to control publicity about a trial, Id. at 357, specifically finding that “the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters,” and noting that “[g]iven the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused.” Id. at 361-62.

In this case, international, national, state, and local media coverage and interest is

great. This case has received prominent and often sensational coverage in virtually all print, electronic, and internet news media in the world. Strong and inflammatory opinion is rampant, including the President in a nationally televised interview deeming the alleged conduct of defendant to be a “despicable crime” and opining that he was “staining the image, the honorable image of the United States Military” (Larry King Live, CNN, July 6, 2006); responding to the allegations against Mr. Green, Gen. Peter Pace, chairman of the Joint Chiefs of Staff, denounced the alleged incident as (Las Angeles Times, "totally unacceptable." a political pundit of national, albeit not intellectual, stature saying: "This is a particularly ugly awful atrocity - they do great damage to the image of the United States, but they are aberrations - they do occur in wartime, and what's different about America is that this guy is going on trial for his life and if he's guilty I would not be surprised to see him and if someone else was involved get the death penalty." (The McLaughlin Group, PBS, July 7, 2006); the Prime Minister of Iraq calling for an international oversight committee to monitor the prosecution (BBC, July 5, 2006); further the Prime Minister of Iraq. Clearly the publicity and public passions surrounding this case present the “clear and imminent danger to the fair administration of justice” recognized by the Sixth Circuit as justifying the gag order requested herein. CBS, Inc, 522 F.2d at 240.

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CERTIFICATE

I certify that a copy of the foregoing motion was served on the United States by mailing and telefaxing same to its counsel of record, Brian Butler, Esq., and Marisa J. Ford, Esq., Assistant United States Attorneys, Tenth Floor, Bank of Louisville Building, 510 West Broadway, Louisville, Kentucky 40202, this 11th day of July, 2006.

/s/ Scott T. Wendelsdorf